IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 3605 of 2006()

SC.83/2004 of ADDL.ASSISTANT SESSIONS COURT, PALAKKAD

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REVN. PETITIONER:

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1. SURENDRAN A.K., S/O. KARUNAKARAN,
   AGED 38 YEARS, POLICE CONSTABL (PC NO.P.4243),
   CHAVAKKAD P.S., THRISSUR.

2. RAMESH V.K., S/O. KARUNAKARAN,
   AGED 46 YEARS, POLICE CONSTABLE (PC NO.P.3601),
   KONGADU POLICE STATION, PALGHAT.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN
SMT.LEENA KRISHNAN

RESPONDENTS: STATE OF KERALA & ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. SYAM KUMAR UNNI, S/O. SANKARANARAYANAN
   NAIR, MANAKAMBATTU HOUSE, GVC ROAD,
   PALAKKAD.

3. VIPIN @ BIBIN, S/O. JOSE,
   ARAKKAL HOUSE, MOOZOOR, AYARKUNNAM,
   KOTTAYAM DISTRICT.

4. P.M.THOMAS, S/O. P.C.MATHAI,
PERUKILAMTHARAPPIL HOUSE, 14/41,
SEKHAREEPURAM ROAD, PALAKKAD.

5. SIVAKUARANUNNI, S/O. SANKARANARAYANAN,
'SUBHA', MANAYKKAMBATTU HOUSE,
COLLEGE ROAD, PALAKKAD.

6. SASIDHARAN, S/O. VELAYUDHAN NAIR,
7/566, COLLEGE ROAD, PALAKKAD.

BY ADV. SRI.VINOD VALLIKAPPAN
SRI.P.K.ASHOKAN
SMT.DHANYA P.ASHOKAN
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3605 of 2006

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Dated: 5-10-2007

ORDER

The revision petitioners both of whom are constables challenge Annexure A5 order dated 28-11-2005 passed by the Addl. Assistant Sessions Court, Palakkad in S.C. 83 of 2004 allowing the Public Prosecutor to withdraw from the prosecution of the above case charged for offences punishable under Sections 143, 147, 148, 353, 333, 324 and 307 read with Sec. 149 and Sec. 3(2) (e) of Prevention of Damage to Public Property Act, 1984 and Section 20 read with Sec. 27 of the Arms Act, 1959. The order of the court below reads as follows:-

> "This case was taken on file as C.P. No. 24 of 2003 before the Judicial First Class magistrate Court II, Palakkad. The accused stand charge sheeted by the Sub Inspector of Police, Town North Police Station under Sections 143, 147, 148, 353, 324, 307 read with Sec. 149 of I.P.C. and Sec. 3 (2) (e) of P.D.P.P. Act and S. 20 read with Sec. 27 of the Arms Act.
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> This case was committed to the Hon'ble court of Sessions, Palakkad after complying with Section 207 Cr.P.C. Subsequently this case was made over to this Court for trial.
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> The accused appeared before this Court and they were on bail. On 17-12-2005, the learned Public Prosecutor has filed Criminal M.P. No. 1401 of 2005 and have produced the order of Additional District Magistrate, Palakkad as per the order a sanction was accorded for the

withdrawal of the case in S.C. No. 83 of 2004 of the Sessions Court, Palakkad Town North Police Station. The matter was heard on 28-11-2005. The petition is allowed and the case is allowed to withdrawn and all the accused are discharged under Sec. 321 (a) of Cr.P.C."

2. After hearing both sides, I have no hesitation to hold that the order cannot pass scrutiny of the court since it is deficit in the legal requirements before the prosecution can be permitted to be withdrawn under Section 321 Cr.P.C. Withdrawal from prosecution can be allowed only if reasons are made out for the same and that too in the interest of justice. The Court has to consider all the relevant circumstances and find out whether withdrawal of prosecution would advance the cause of justice. Discretion under Sec. 321 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Withdrawal can be permitted if the case is likely to end in acquittal and continuance of the case would only cause severe harassment to the accused. Similarly, withdrawal can be allowed if such withdrawal is likely to burry the dispute and bring about harmony between the parties. (**Vide Rahul Agarwal v. Rakesh Jain and Others - 2005 (2) SCC 377).** The Public Prosecutor in-charge of the case has also a duty under Sec. 321. He cannot act like a postbox or act on the dictates of the State Government . The Public Prosecutor should apply his mind and act bonafide in making a request to the

Court . **(See S.K. Shukla and Others v. State of U.P. and Others - 2006 (1) SCC Crl. 366).** He has to act in a manner befitting an officer of the court. The court is not bound by the opinion of the Public Prosecutor and is free to assess whether a prima facie case is made out for allowing the prosecution to be withdrawn. A perusal of the impugned order will show that the learned Assistant Sessions Judge was not alive to the above legal requirements before the prosecution was permitted to be withdrawn. It calls for a speaking order considering the interests of both sides. The impugned order which does not give any valid reason for allowing the request of the Public Prosecutor is accordingly set aside without prejudice to the right of the Public Prosecutor to seek withdrawal of the prosecution, if, grounds in that behalf do exist.

V. RAMKUMAR,
(JUDGE)

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